STATE OF MICHIGAN

COURT OF APPEALS

RICHARD W. PARRY,

Petitioner-Appellant,

v

GROVELAND TOWNSHIP,

Respondent-Appellee.

UNPUBLISHED
June 12, 2014

No. 307992
Michigan Tax Tribunal
LC No. 00-387318-1

RICHARD W. PARRY,

Plaintiff/Counter-Defendant-Appellant,

v

GROVELAND TOWNSHIP,

Defendant/Counter-Plaintiff-Appellee,

and

CHARLES CAIRNS, LEMAN VILICAN & ASSOCIATES, ROBERT R. DEPALMA, DAVID C. AX, VINCENZO FERRERI, WAYNE A. DROSSEAU, HAROLD R. COZON, PAMELA QUE, HELYNNE V. SHANK, JEAN E. SOVA, RODERICK KRUPKA, JAMES T. CHRISTOPHER, and KEVIN F. MASON,

Defendants/Counter-Plaintiffs.

No. 313335
Oakland Circuit Court
LC No. 2011-122887-CZ

RICHARD W. PARRY,

Petitioner-Appellant,

v

No. 313717

GROVELAND TOWNSHIP,

Respondent-Appellee.

Michigan Tax Tribunal
LC No. 00-432905

RICHARD W. PARRY,

Petitioner-Appellant,

v

GROVELAND TOWNSHIP,

Respondent-Appellee.

No. 319112
Michigan Tax Tribunal
LC No. 00-450722

Before: JANSEN, P.J., and MURRAY and BOONSTRA, JJ.

PER CURIAM.

This is a consolidated appeal. In Docket Nos. 307992, 313717 and 319112, petitioner, Richard W. Parry, appeals as of right three opinions and judgments of the Tax Tribunal pertaining to the assessment of property taxes for the tax years 2011, 2012 and 2013. We affirm those opinions and orders.

In Docket No. 313335, Parry appeals as of right the Oakland Circuit Court's orders granting summary disposition and awarding sanctions to defendant/counter-plaintiff, Groveland Township (the "Township"). We affirm in part and reverse in part.

I. FACTS AND PROCEEDINGS

This case involves the division of a tract of land into several parcels and the subsequent tax assessments pertaining to one of the parcels now owned by Parry. Notably, disputes regarding the division, sale, and taxation of this land have been the subject of 14 prior lawsuits and 8 prior appeals dating back to the late 1980s.[1]

A. THE LAND

The original parcels underlying this litigation are located in Ortonville, Michigan. They total approximately 11.4 acres and were assigned Tax Identification Nos. 02-13-100-044 ("044") and 02-12-100-048 ("048"). Parcel 044 was a 10.34 acre lot with access to Grange Hall Road to

[1] See Court of Appeals Docket Nos. 130336, 134411, 153703, 154639, 159050, 288786, 289412 and 289514.

the East. Its common address was 760 Grange Hall Road. Parcel 048 was a 1.06-acre lot on the northwest border of Parcel 044 with access to Brandt Road. Parcel 048 had a house addressed 707 S. Brandt Road.

The seminal dispute arose in 1988 and culminated with the entry of a Consent Judgment in 1991, which established a permanent ingress/egress easement for the benefit of Parcel 048 – which Parry had sold in November 1988 – to Brandt Road.[2]

By late 2006, Robert and Ann Wright had acquired ownership over both Parcels 044 and 048. Each parcel apparently had a separate mortgage. At the Wrights' request, Parcel 044 was divided into two separate pieces: (1) Parcel B (5.33 acres at the eastern half of Parcel 044), and (2) Parcel A (5.01 acres at the western half of Parcel 044 and immediately south of Parcel 048). Parcel B had a house and a barn with access to Grange Hall Road. Parcel A did not border any roads, but has, according to Parry, the common address of 762 Grange Hall Road.

Simultaneous with that split, Parcel A was combined with Parcel 048, and new Tax Identification Numbers were assigned. Parcel B – the five acres on Grange Hall Road – was assigned Tax Identification No. 02-12-100-055 ("055"). The combined lot consisting of former Parcel A and former Parcel 048 was assigned Tax Identification No. 02-12-100-54 ("054").

Despite the split of Parcel 044, the mortgage over that Parcel remained outstanding. In 2007, the Wrights defaulted, and the lender foreclosed on that Parcel, which was conveyed by Sheriff's Deed to Mortgage Electronic Registration Systems ("MERS"). The Sheriff's Deed reflects in typeface that the property foreclosed upon was Parcel 044. However, a handwritten notation appears next to the typeface with the identifications "055" and "054 PT."

An interest in both the old Parcel 044 and at least part of Parcel 054 were subsequently acquired by Homecomings Financial, LLC. The quitclaim deed from MERS to Homecomings indicates in typeface that Homecomings acquired an interest in Parcel "044." Handwritten next to the typeface are the numbers "054" and "02-13-100-055."

On October 2, 2009, Homecomings Financial transferred its interest in Parcel 054 to David Thomson for $1.00 by quitclaim deed. That quitclaim deed expressly references Parcel "054," but also contains the handwritten address "760 Grange Hall Road." On December 28, 2009, Thomson conveyed his interest in Parcel 054 to Parry by quitclaim deed for $1.00, although Parry represented to the Groveland Treasurer – and has maintained throughout this litigation – that he accepted conveyance of only 5.01 acres of the property formerly known as Parcel A. The Township tax record, however, identified Parry as the owner of Parcel "054" without distinction.

[2] The servient estate was a parcel with a common address of 777 Brandt Road, which as of April 16, 2010, was owned by Parry's son and daughter-in-law. That Parcel's current Tax Identification Number is 02-13-100-053. *Wright v Parry*, unpublished opinion per curiam of the Court of Appeals, issued March 23, 2010 (Docket Nos. 288786 & 289412).

In February 2010, Parry threatened legal action against certain Oakland County officials if separate Tax Identification Numbers were not issued to "correct" that the prior foreclosure had caused a "de facto" split of the old Parcel 048 off of Parcel 054 since the foreclosure applied only to the old Parcel 044 (i.e., Parcels A and B). The next month, Parry petitioned the Township Board of Review ("BOR") for the same relief and also requested that Parcel A be assessed "fairly." Because the Township allegedly directed the BOR to deny this relief, in April 2010, Parry filed an appeal in the Tax Tribunal.

On May 17, 2010 – over the Township's opposition – the Oakland County Equalization Division ("OCED") issued new Tax Identification Numbers, designating the old, 1.06 acre-Parcel 048 as 02-13-100-056 ("056") and the old, 5.01 acre-Parcel A as 02-13-100-057 ("057"). These new Tax Identification Numbers were never changed, and importantly, it is the old Parcel A (now known as Parcel 057 and owned by Parry) that is the subject of this appeal.

B. OAKLAND CIRCUIT COURT PROCEEDINGS – DOCKET NO. 313335

On March 8, 2011, the Township filed a complaint in Oakland Circuit Court seeking declaratory and injunctive relief challenging the "de facto" split of real property created by the mortgage foreclosure.[3] Parry, in turn, filed a counter-complaint, seeking a declaration that the foreclosure of the Wrights' property pertained only to Parcels A and B, and injunctive relief requiring the Township to support and not interfere with the construction of an easement to benefit Parcel A. This litigation – formerly containing Oakland Circuit Court Docket No. 2011-117470-CZ – is identified as "Case 1."

Parry then filed a separate complaint against the Township and certain officials, this time alleging tortious interference with a contract on the ground that certain officials caused the Wrights to breach the 1988 Grant of Easement (Count I); tortious interference with a business relationship claiming that the public statements of certain officials that Parcel A was "worthless" and "unbuildable" precluded Parry from selling Parcel A (Count II); and willful failure to perform a duty under MCL 211.119. (Count III); the parties refer to this litigation as "Case 2." Both cases were consolidated under Oakland Circuit Court Docket No. 2011-12887-CZ.

Because the Township eventually conceded that Parry only owned Parcel A (identified as Parcel 057) and declined to contest whether the allegedly "landlocked" Parcel A constituted a "nonconforming use" under relevant ordinances, on January 18, 2012, the Township voluntarily dismissed its complaint. Parry did not dismiss any of his claims or counter-claims, however.

Six months later, the Township (and Township officials) moved to dismiss *all* of Parry's claims and counter-claims under MCR 2.116(C)(6), (7), (8) and (10). The Township argued that the dismissal of its complaint rendered moot Parry's counter-claims in Case 1, and further claimed that Parry's complaint in Case 2 was barred by governmental immunity and that Parry

[3] The Township subsequently amended the complaint to add certain additional parties and sought similar declaratory and injunctive relief.

had otherwise failed to state a claim upon which relief may be granted. The Township further requested sanctions against Parry for pursuing a frivolous action.

Parry responded, disputing the applicability of governmental immunity and argued that his allegations were sufficient to survive summary disposition. Parry also maintained his claims in Case 1 remained viable until the Township properly acknowledged his property interests, and contended that the Township had interfered with his obtaining an easement for Parcel A.

After entertaining brief arguments at the ensuing motion hearing, the circuit court ruled that governmental immunity barred Parry's actions and that the Township was entitled to sanctions against Parry for pursuing a frivolous action. The court gave only the following brief explanation of its holding:

> The Court has reviewed the motion . . . with special attention to Plaintiff's exhibits, with an eye towards the undisputed legal immunity Plaintiff must overcome . . . . Nothing in the exhibits appears . . . to be any more reflective of conduct beyond the discharge of a governmental function or on behalf of a governmental agent discharging a governmental function, than it is reflective of conduct within such functions.

Regarding sanctions, the court explained:

> I have focused or expressed comments concerning the exhibits by . . . Mr. Parry and the governmental immunity motion in light of the prayer for sanctions. If there was something in . . . Parry's exhibits that would smell of some kind of conduct outside of governmental immunity, I would tell you straight out . . . notwithstanding I'm not going to employ propensity evidence in prior lawsuits to put me over the edge in favor of it [granting sanctions]. I would say no, there was some smell here and . . . sanctions are denied [on that ground] . . . . But I will say there's nothing that this Court has found that would again reveal by preponderance conduct outside of a normal discharge . . . of a governmental function. The Court is inclined to grant sanctions . . . I trust that you [the Township] agree that they're limited to these two lawsuits, and not for 12 other ones . . . .

The order dismissing Parry's claims and counter-claims was entered on September 14, 2012. Following a hearing regarding the Township's fees, an order awarding sanctions in the amount of $34,889.47 was entered on November 6, 2012. Parry appealed to this Court on November 15, 2012.

C. 2011 TAX ASSESSMENT PROCEEDINGS – DOCKET NO. 307992

While the action in Oakland Circuit Court was pending, Parry filed a petition in the Tax Tribunal regarding the 2011 tax assessment of $42,660 for Parcel 057 (formerly known as Parcel

A).[4] Parry claimed the true cash value ("TCV") was $100. The Township submitted a Valuation Disclosure, which established a revised TCV of $29,900 using the sales comparison approach.

On October 12, 2011, the referee issued a proposed opinion and judgment adopting the Township's revised TCV. The referee explained that although Parry claimed the property lacked value because it was "landlocked," Parry had "knowingly and willingly" purchased Parcel 057 at a time when he owned none of the adjoining parcels, and had otherwise failed to present any evidence establishing the value of Parcel 057 (or Parcel 054) for the 2010 and 2011 tax years. The referee further concluded that the Township had provided vacant land sales comparables for 2011 and two verified bank sales which supported the revised evaluation, and had therefore supported the revised assessment. The Tribunal ultimately adopted this Proposed Opinion and Judgment over Parry's objections[5] on January 5, 2012. Parry appealed to this Court on January 10, 2012.

D. 2012 TAX ASSESSMENT PROCEEDINGS – DOCKET NO. 313717

In April 2012, Parry filed a petition in the Tribunal regarding the 2012 tax assessment of $29,440 for Parcel 057. Parry claimed that "collective common sense" and the prior sales of this parcel for $1.00 established that this property was "landlocked" and that its assessment was incorrect. The Township again submitted a Valuation Disclosure confirming its 2012 assessment of $29,440 using the sales comparison approach.

On September 25, 2012, a proposed opinion and judgment was issued, determining a TCV of $23,800. In reaching this conclusion, the referee found that although the "landlocked" property's purchase price of $1.00 was unreliable, Parry's estimation that a "driveway easement" would cost $8,000 to $12,000 was reasonable. Based on this, the referee adjusted the Township's analysis to account for the cost of an easement and determined a TCV of $23,800. Parry subsequently filed exceptions arguing that the $8,000 was insufficient to "get . . . through the woods from the county road to the subject property," and that the proposed opinion failed to account for the litigation in circuit court, which would affect whether Parry or a potential buyer would expend money for an easement

The Tribunal declined to adopt the referee's recommendation in part. First, the Tribunal noted that an adjustment was improper because it was unsupported by documentary evidence.

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[4] Parry's 2010 petition to the Tax Tribunal was consolidated with his 2011 petition. Parry concedes that because all taxes owed for 2008, 2009 and 2010 were paid, the 2010 petition is moot. His appeal in Docket No. 307992 reflects this concession, as he only challenges the Tribunal's decision regarding the 2011 assessment. Accordingly, Parry's suggestion in Docket Nos. 313717 and 319112 that he has appealed the propriety of the 2010 assessment in these consolidated appeals is wrong. The Tribunal's ruling regarding the 2010 assessment is not before this Court.

[5] Parry's exceptions to the Proposed Opinion and Judgment argued that the referee failed to adequately address the "as is" conditions of Parcel 057.

Second, the Tribunal found that reliance on the sales comparison approach was improper because the adjustment rates applied to the acreage of Parcel 057 – a parcel that was "landlocked" – were not also applied to the comparable properties in the Valuation Disclosure. Utilizing "the only remaining evidence of value," the Tribunal determined that the property record card reflected the proper acreage and properly utilized adjusted rates to establish a land value of $29,440. Parry appealed that decision to this Court on December 7, 2012.

E. 2013 TAX ASSESSMENT PROCEEDINGS – DOCKET NO. 319112

In April 2013, Parry petitioned the Tribunal regarding Parcel 057's 2013 tax assessment of $25,020. Parry claimed the prior sales of this parcel for $1.00 established that this "landlocked" property's assessment was incorrect. Parry also argued that the assessment – which otherwise failed to account for the location and condition of the property – should be the nominal value of $50. The Township submitted a Valuation Disclosure, and confirmed its 2013 assessment.

On October 14, 2013, the Tribunal issued an opinion and judgment adopting the Township's assessment. The Tribunal explained that Parry had "provided no market based or other valuation evidence to support his value contentions." In reaching this conclusion, the Tribunal found no evidence that the property's sale to Parry was accomplished at arm's length or that the lack of road frontage affected the property's value, especially considering that Parry had been on the property within the last year and that his son owned land adjoining this parcel. The Tribunal further found that Parcel 057 "is not and cannot be landlocked by operation of law." As for the Township's assessment, the Tribunal noted Parry had failed to present evidence that the comparable sales presented by the Township were dissimilar from Parcel 057 and had failed to specify what adjustments to those comparable sales would be necessary for an accurate comparison. Accordingly, the Tribunal held that the Township's vacant land sales comparison approach was the most reliable evidence of value on record. Upon the denial of his subsequent motion for reconsideration, Parry appealed this decision on November 15, 2013.

II. APPEAL FROM OAKLAND CIRCUIT COURT – DOCKET NO. 313335[6]

A. SUBJECT MATTER JURISDICTION

In Docket No. 313335, Parry first challenges the circuit court's jurisdiction over Case 1 and all subsequent proceedings. Although Parry raises this issue for the first time on appeal, the issue of subject matter jurisdiction may be raised at any time. *McFerren v B & B Investment Group*, 233 Mich App 505, 512; 592 NW2d 782 (1999). Accordingly, we review this question of law de novo. *Harris v Vernier*, 242 Mich App 306, 309; 617 NW2d 764 (2000). To the extent this issue implicates the interpretation and application of a statute, our review is likewise

[6] Contrary to the Township's argument in Docket No. 313717, Parry has not abandoned this appeal. The November 6, 2012 order of the circuit court was the "final order" in that case, and Parry's claim of appeal, filed November 15, 2012, was timely. See MCR 7.204(A).

de novo. *In re Petition by Wayne Co Treasurer for Foreclosure of Certain Lands for Unpaid Prop Taxes,* 265 Mich App 285, 290; 698 NW2d 879 (2005).

"Circuit courts are courts of general jurisdiction, and have original jurisdiction over all civil claims and remedies except where exclusive jurisdiction is given by the constitution or by statute to some other court or where the circuit courts are denied jurisdiction by the constitution or statutes of this state." *Cherry Growers, Inc v Agricultural Marketing & Bargaining Bd*, 240 Mich App 153, 160; 610 NW2d 613 (2000) (quotation marks and citation omitted); see also Const 1963, art 6, § 13; MCL 600.605. Jurisdiction to determine interests in land and partitions of land is expressly conferred on the circuit court by statute. MCL 600.2932(1); MCL 600.3301. In contrast, MCL 205.731 confers exclusive and original jurisdiction on the Tax Tribunal to matters "relating to assessment, valuation, rates, special assessments, allocation, or equalization, under the property tax laws of this state" and to "proceedings for refund or redetermination of a tax levied under the property tax laws of this state." See *Highland-Howell Dev Co, LLC v Marion Twp,* 469 Mich 673, 676; 677 NW2d 810 (2004). Whether a court has jurisdiction is determined by the true nature of the claim and the relief sought *at the beginning of the action*. *Altman v Nelson,* 197 Mich App 467, 472; 495 NW2d 826 (1992); *Colonial Village Townhouse Co-op v City of Riverview*, 142 Mich App 474, 478; 370 NW2d 25 (1985).

The thrust of Parry's argument is that because the Township sought review of an OCED decision in an effort to recover lost tax revenue, the Tax Tribunal had exclusive jurisdiction over this case. This was not the gravamen of the Township's complaint, however. To the contrary, the Township's challenge was not its loss of taxes occasioned by the "split" of real property, but rather the alleged ineffective recognition of a *division* of land occasioned by the OCED's issuing new tax identification numbers. As the complaint states:

> The OCED acted improperly in assigning new tax identification numbers to the parcels resulting from the declared "de facto" split of -054. The parcel's new taxable designations, i.e., -056 and -057, should be deemed ineffective and non-binding because only the Township possesses the regulatory authority required to divide or combine land within its jurisdiction.

This language makes clear that the Township's claim was not to challenge the effect of the OCED's decision on the Township's ability to collect certain taxes, but rather the authority of the OCED to assign tax identification numbers reflecting a division of property the Township had not approved in the first instance. This challenge involved the interpretation of Township ordinances and a request for equitable relief flowing from the application of these ordinances. This falls squarely within the circuit court's statutorily defined jurisdiction. MCL 600.2932; MCL 600.3301.

Parry's challenge to the circuit court's ability to grant the Township relief cannot change this conclusion. Indeed, the relief requested by the Township – i.e., a declaration that the "split" was unlawful and also injunctive relief abating the "split" and enjoining challenges to taxes assessed on that basis – flows logically from the premise that no division of Parcel 054 occurred legally in the first place. Put differently, if the OCED had improperly recognized a division of property, there was no foundation for Parry to challenge the assessed taxable value of Parcel A. That the Township attempts to justify the merits of its position by recounting the condition of

Parcel A and the extent of its authority to divide land merely buttresses that its complaint was not about recovering tax revenue. Therefore, regardless of the merit of the Township's position, the circuit court had subject matter jurisdiction.

B. COSTS AS A CONSEQUENCE OF VOLUNTARY DISMISSAL

Parry's claim for costs is equally without merit. On this score, Parry maintains that the circuit court abused its discretion in declining to award costs as a condition to the Township's voluntary dismissal of its first amended complaint.[7] See MCR 2.504(A)(2) (permitting voluntary dismissal of a complaint on terms the court deems proper); *McKelvie v City of Mount Clemens*, 193 Mich App 81, 84; 483 NW2d 442 (1992) (finding that MCR 2.504(A)(2) permits a circuit court to "condition a grant of voluntary dismissal upon the payment of costs and attorney fees."). However, it was Parry's decision to continue pursuing his counter-claims after the Township sought voluntary dismissal of its action. And since those counter-claims (and his subsequent complaint) arose out of the same facts underlying the Township's complaint, Parry's work product was necessarily usable in the ensuing litigation. Costs are not appropriate under these circumstances. *Id*. at 84 (finding that a plaintiff should not incur costs and fees as a condition of voluntary dismissal where the defendant's work product is usable in a subsequent action). The trial court's decision did not fall outside the range of reasonable and principled outcomes. *Maldonado v Ford Motor Co*, 476 Mich 372, 388; 719 NW2d 809 (2006).

C. SUMMARY DISPOSITION

Parry next contends that the trial court erred in granting the Township's motion for summary disposition. The trial court dismissed Parry's complaint (Case 2) and counter-complaint (Case 1) under MCR 2.116(C)(7) (pertaining to governmental immunity) and (C)(6) (pertaining to another action between the parties involving the same claim), respectively. Our review of a circuit court's dismissal under both subsections is de novo, and involves interpretation of the governmental tort liability act (the "act"), MCL 691.1401 *et seq*. *Davis v Detroit*, 269 Mich App 376, 378; 711 NW2d 462 (2006); *Fast Air, Inc v Knight*, 235 Mich App 541, 543; 599 NW2d 489 (1999). That act exempts from tort liability governmental agencies engaged in the exercise of a governmental function, MCL 691.1407(1); judges, legislators, executives and the highest appointive officials of the highest level of government acting within the scope of their authority, MCL 691.1407(5); and certain governmental employees, who, *inter alia*, reasonably believe they are acting within the scope of their employment, MCL 691.1407(2).

As a preliminary matter, we note our difficulty in determining on this record whether governmental immunity applies. For starters, it is unclear whether the officials named in the complaint acted as merely lower level members of a Township planning commission (in which case MCL 691.1407(2) applies) or whether those officials acted as Township board members (in which case MCL 691.1407(5) applies). See *Armstrong v Ypsilanti Charter Twp*, 248 Mich App 573, 591-593; 640 NW2d 321 (2001) (applying MCL 691.1407(5) to township board members).

[7] Contrary to the Township's argument, Parry did not waive his request to seek costs at the hearing on this matter.

Indeed, the Township is equivocal on this point (see, e.g., the Township's assertion in its Brief at p 22: "It is undisputed that the Appellee defendants (except now retired Charles Cairns and his former company, Vilican-Leman & Associates, Inc., the Township planning consultant at the time) were members of the Groveland Township planning commission and/or Groveland Township board during the relevant period."[8] The difficulty in reviewing the circuit court's decision on this ground is further exacerbated by the lack of an explanation either at the hearing on the Township's motion for summary disposition or in the order of dismissal.

Irrespective of this – as the Township argued both below and on appeal – Parry has otherwise failed to state a claim. See *Wickings v Arctic Enterprises, Inc*, 244 Mich App 125, 150; 624 NW2d 197 (2000) (this Court may affirm the trial court's conclusion on alternate grounds); see also *Peterman v Dep't of Natural Resources*, 446 Mich 177, 183; 521 NW2d 499 (1994) (this Court may review an issue properly raised below even if not addressed by the trial court). Our review of a motion MCR 2.116(C)(8) focuses on the pleadings; we regard all well-pleaded factual allegations as true, as well as any reasonable inferences or conclusions that can be drawn from the allegations. *Jenks v Brown*, 219 Mich App 415, 417; 557 NW2d 114 (1996).

a. CASE 2

In Case 2, Parry alleges three counts: tortious interference with a contract (Count I), tortious interference with a business relationship (Count II), and a violation of MCL 211.119 (Count III). As for Count I, the law required Parry to allege "(1) the existence of a contract, (2) a breach of the contract, and (3) an unjustified instigation of the breach by the defendant." *Knight Enterprises v RPF Oil Co*, 299 Mich App 275, 280; 829 NW2d 345 (2013) (citation omitted). This Parry failed to do.

Parry's complaint specifically cites the 1988 Grant of Easement (which originally allowed the property known as 707 Brandt Road access to Brandt Road) as the contract underlying Count I.[9] Parry's problem in establishing tortious interference with this contract is that his allegations do not show that the Township officials *instigated* any breach. Indeed, the complaint is clear that the officials "approved" the Wrights' request to combine Parcel A and acted in response to the Wrights' requests. Acting in response is not instigation. But even absent the Township's responsive posture, it does not appear there was even a breach of the 1988 Easement Agreement since, upon the creation of Parcel 054 (i.e., the combination of Parcel A with Parcel 048), the old, Parcel A had access to Brandt Road. This Count cannot stand.

Parry likewise failed to establish Count II. To prove tortious interference with a business relationship a plaintiff must establish, *inter alia*, that the interference was improper either by

[8] Moreover, Parry is correct that as an independent contractor, Charles Cairns and his company, Vilican-Leman, are not entitled to governmental immunity. See *Rakowski v Sarb*, 269 Mich App 619, 624-627; 713 NW2d 787 (2006).

[9] While the Township is correct that Parry was not a party to this agreement, this is not dispositive since the agreement ran with the land at issue.

proving "(1) the intentional doing of an act wrongful per se, or (2) the intentional doing of a lawful act with malice and unjustified in law for the purpose of invading plaintiff's contractual rights or business relationship." *Advocacy Org for Patients & Providers v Auto Club Ins Ass'n*, 257 Mich App 365, 383; 670 NW2d 569 (2003), aff'd 472 Mich 91 (2005). The improper acts Parry alleges are the Township's initiating litigation and threatening a potential buyer by stating publicly that Parcel A was "worthless" and "unbuildable." Neither was wrongful per se or unjustified in law. Regarding the former, the Township certainly had the right to bring an action in good faith to resolve the "de facto" split of real property. Regarding the latter, statements that Parcel A was "worthless" and "unbuildable" amount to nothing more than expressions of opinion that "reasonably cannot be interpreted as stating actual facts about an individual," or, in this case, the parcel. *Lakeshore Community Hosp, Inc v Perry*, 212 Mich App 396, 402; 538 NW2d 24 (1995). Accordingly those comments cannot be considered wrongful or otherwise unjustified in law. *Id*.

In Count III, Parry alleges a violation of MCL 211.19, which makes it a misdemeanor to willfully neglect or refuse to perform any of several specified duties in the General Property Tax Act, MCL 211.1 *et seq*., and imposes liability to the person injured. The specific violations Parry alleges under that section were the failure of certain Township officials to process his Property Transfer Affidavit and to adjust the "tax rolls" under MCL 211.29 to reflect his ownership of Parcel A (the new Parcel 057). In support, Parry highlights that while his Property Transfer Affidavit indicates his acquisition of only Parcel "054 PT," the "tax rolls" reflected Parry's ownership of Parcel "054."

At the outset, it does not appear Parry filed any supplemental or corrected Affidavit reflecting the issuance of new Tax Identification No. 057. Regardless, Thomson's quitclaim deed to Parry and Parry's conveyance agreement with Thomson indicate – *without qualification* – Parry's acquisition of Thomson's rights to Parcel "054." The quitclaim deed further identifies Parcel 054 as comprising 6.07 acres (and not the 5.01 acres that Parry claims he accepted).[10] Parry concedes the Township was in possession of both documents during the relevant time frame. In view of this, it is difficult to see how the Township officials failed to carry out their alleged duties as plaintiff claims, especially considering that, until withdrawing its own complaint, the Township had a good faith disagreement with Parry as to legal effect of the OCED's assigning new Tax Identification Numbers 056 and 057. Count III was properly dismissed.

b. CASE 1

Turning to Case 1, Parry sought two forms of relief in his counter-complaint. In Count I, Parry sought a declaration essentially recognizing that the foreclosure of the Wrights' property pertained exclusively to Parcels A and B. To this end, Parry specifically requested the court to declare that (1) the Sheriff's Deed transferred a 10.34-acre parcel known as 760 Grange Hall

[10] Whether Parry recorded the quitclaim deed is of no moment since a deed's validity is not dependent upon whether it was recorded. *Ligon v Detroit*, 276 Mich App 120, 128; 739 NW2d 900 (2007).

Road from the Wrights to MERS, (2) the property transferred in September 2007 consisted of Parcels A and B as shown on the certificate of survey, and (3) the sale and transfer of this property nullified the combination of Parcel A with Parcel 048. Parry additionally requested the court to direct the Township to "correct" its property records to properly reflect the transfer of Parcels A and B from the Wrights to MERS. In Count II, Parry sought injunctive relief (1) enjoining Township officials from discouraging an adjoining property owner from granting access to Parcel A, (2) directing the Township to support and encourage any effort to arrange access to Parcel A, and (3) enjoining the Township from otherwise interfering with the construction of an easement to Parcel A. Dismissal of these counter-claims was proper.

First, Parry's request for declaratory relief is moot, in part. Indeed, when withdrawing its complaint, the Township conceded at the hearing that Parry owns Parcel A (now identified as Parcel 057) and that the former mortgagee of Parcel 048 (apparently, HSBC Bank USA) owns the 1.06-acre lot now identified as Parcel 056. This concession necessarily presupposes that the foreclosure of the Wrights' property at issue pertained only to Parcels A and B, that the property sold in September 2007 consisted of Parcels A and B, and that this foreclosure effectively nullified the combination of Parcel A with Parcel 048. Even Parry admits that the tax rolls correctly reflect his ownership of Parcel A (now known as Parcel 057). The declaratory relief Parry seeks on this basis is therefore moot. *City of Jackson v Thomson-McCully Co, LLC*, 239 Mich App 482, 493; 608 NW2d 531 (2000) ("An issue is moot if an event has occurred that renders it impossible for the court, if it should decide in favor of the party, to grant relief.").

Regarding the Sheriff's Deed, that document provides a detailed description of the property at issue, including the address. It speaks for itself. As for correction of the Township's records, Parry did not attach to his complaint, let alone identify, the incorrect records at issue. He therefore provided no basis for this relief. Dismissal of Count I was proper.

Second, the injunctive relief Parry seeks is without legal foundation. Specifically, Parry bases this claim on the Township's alleged violations of the land division act, MCL 560.101 *et seq*., specifically MCL 560.109(1)(e), which requires that a township approve an application for a proposed division of land provided, among other things, that the parcel resulting from the land division is "accessible,"[11] and related Township ordinances precluding any division or combination of land that will prevent access via a deed strip or direct fronting access. Parry alleges these violations occurred when the Township originally approved the Wrights' application to divide the old Parcel 044 into Parcels A and B.

The apparent basis of this argument is that Parcel A's access to Grange Hall Road purportedly ceased to exist upon the dissolution of Parcel 044. However, it is undisputed that at the time of Parcel 044's division into Parcels A and B, Parcel A was simultaneously combined with Parcel 048 (to form Parcel 054), which had access to Brandt Road. In other words, Parcel A and Parcel 048 were combined to form one, single parcel (Parcel 054) that was not

[11] A parcel is "accessible" if it has a driveway or easement that conforms to the local authority's location standards. MCL 560.102(j)(*i*) and (*ii*).

"landlocked."[12] Indeed, it was out of concern that Parcel A remain accessible after the foreclosure that the Township originally filed its own complaint to challenge the "de facto" split of Parcel 054 in the first instance. The record does not reveal that the Township was otherwise requested to review an application involving any subsequent division of Parcel A, let alone that the Township subsequently created a parcel that was not accessible. Rather, Parry threatened the OCED with a lawsuit if new Tax Identifications Numbers were not issued to reflect his ownership of Parcel A after the foreclosure and subsequent sale. Accordingly, Parry lacks a legal foundation to support his various requests for injunctive relief. Count II was properly dismissed, albeit on this alternate ground.

Before moving on, we note that the Township argues at length that Parry's claim for injunctive relief is barred since it was Parry – and not the Township – who "landlocked" Parcel A. Review of this argument implicates MCR 2.116(C)(10) – a ground upon which the Township moved below and fully briefed on appeal.

We review this issue de novo to determine whether the Township is entitled to summary disposition as a matter of law because there is no genuine issue as to any material fact. *Curry v Meijer, Inc*, 286 Mich App 586, 590; 780 NW2d 603 (2009). "A genuine issue of material fact exists when the record, giving the benefit of reasonable doubt to the opposing party, leaves open an issue upon which reasonable minds might differ." *West v Gen Motors Corp*, 469 Mich 177, 183; 665 NW2d 468 (2003). In reviewing this motion, we consider the pleadings, affidavits, depositions, admissions and other documentary evidence and construe them in the light most favorable to the nonmoving party. *Corley v Detroit Bd of Ed*, 470 Mich 274, 278; 681 NW2d 342 (2004). "Where the burden of proof rests with the nonmoving party, that party must respond with documentary evidence to demonstrate the existence of a genuine issue of material fact for trial. The failure of the nonmoving party to so respond results in the entry of judgment for the moving party." *Curry*, 286 Mich App at 591.

In support of its claim, the Township cites Parry and Thomson's December 28, 2009 "Agreement for Conveyance of Real Estate." That document could not more clearly prohibit Parry from seeking an easement across the former Parcel B (now Parcel 055) to benefit Parcel A. The Township asserts this is dispositive since, absent access to Parcel A from either Parcel B or the adjacent 707 Brandt Road property (i.e., Parcel 048), Parcel A is otherwise not accessible. Parry's August 17, 2009 "Agreement/Contract" with Thomson reflects this point in noting that Thomson's sale of Parcel B would "landlock" Parcel A absent access from 707 Brandt Road (i.e., Parcel 048). Accordingly, these documents minimally reveal that Parry agreed to purchase Parcel A in its current condition – whether "landlocked" or not.[13]

[12] Parry concedes this fact in his appeal in Docket No. 313717.

[13] It is unclear whether Parcel A is in fact "landlocked," given Parry's admission that he has been on that property since 2012. Regardless, Parry presented no documentation refuting the inference that he purchased Parcel A in its current condition.

The Township claims this is significant since any "deed strip" easement to benefit Parcel A which Parry may seek would necessarily exceed 600 feet, which in turn would violate Groveland Township Ordinance § 38-265. The Township further argues that while a variance of this ordinance may be permitted on the ground of undue hardship,[14] a variance for an undue hardship cannot be issued if that hardship is "self-created." See *Norman Corp v City of East Tawas*, 263 Mich App 194, 202; 687 NW2d 861 (2004).

Notably, Parry has conceded that a "deed strip" easement under these circumstances is prohibited by ordinance, and it does not appear that he has formally requested a variance. Regardless, he has conceded it would be possible to obtain a "driveway" easement instead. Accordingly, while it appears Parry's alleged lack of accessibility to Parcel A may be "self-created," a variance (or a court order mandating a variance) is not Parry's only recourse given that he may otherwise obtain an easement without a variance. Regardless, Case 1 was properly dismissed for the failure to state a claim under MCR 2.116(C)(8).

D. THE TOWNSHIP'S REQUEST FOR SANCTIONS

Despite our affirmance of the summary disposition order, we agree with Parry that the circuit court improperly awarded the Township sanctions. The Township moved below for sanctions under MCR 2.114(F), MCR 2.625(A)(2), and MCL 600.2591 on the ground that Parry's claims and counter-claims were frivolous. We review the circuit court's finding that Parry's claims were frivolous for clear error. *Szymanski v Brown*, 221 Mich App 423, 436; 562 NW2d 212 (1997). A decision is clearly erroneous if we are left with a definite and firm conviction that a mistake has been made. *Burgess v Clark*, 215 Mich App 542, 547; 547 NW2d 59 (1996).

MCR 2.114(F) provides, "[i]n addition to sanctions under this rule, a party pleading a frivolous claim or defense is subject to costs as provided in MCR 2.625(A)(2)." MCR 2.625, in turn, states that "if the court finds on motion of a party that an action or defense was frivolous, costs shall be awarded as provided by MCL 600.2591." Under MCL 600.2591(3)(a), an action is considered frivolous if at least one of the following conditions is met:

> (*i*) The party's primary purpose in initiating the action or asserting the defense was to harass, embarrass, or injure the prevailing party.
>
> (*ii*) The party had no reasonable basis to believe that the facts underlying that party's legal position were in fact true.
>
> (*iii*) The party's legal position was devoid of arguable legal merit.

Here, the circuit court found sanctions appropriate because "there's nothing . . . that would again reveal by a preponderance conduct outside of . . . [the] normal discharge of a

[14] See Groveland Township Ordinance, 54-31; *Norman Corp v City of East Tawas*, 263 Mich App 194, 202; 687 NW2d 861 (2004).

government function." This finding was clearly erroneous in light of the fact that governmental immunity was inapplicable to at least one of the defendants named in Parry's complaint (see footnote 8) and the court otherwise made no individual findings as to Parry's separate counts alleged.

Nor can we accept the Township's argument that Parry's long history of litigation and alleged plan to "landlock" Parcel A rendered his claims and counter-claims frivolous. Indeed, in voluntarily dismissing its complaint, the Township conceded a portion of the relief Parry sought in filing his counter-claim. This is nothing if not a tacit admission that at least a portion of Parry's counter-complaint was not frivolous. Moreover, irrespective of whether Parry "landlocked" Parcel A, his counter-claim and complaint stem from his assertion that the Township originally "landlocked" Parcel A in 2006 – a claim that precedes his agreements with Thomson. In short, the Township has established none of the grounds in MCL 600.2591(3)(a).[15] We therefore reverse the portion of the September 13, 2012 order granting the Township's request for sanctions and further reverse the November 6, 2012 order imposing sanctions of $34,889.47 against Parry.[16]

III. TAX ASSESSMENT APPEALS

In Docket Nos. 307992, 313717 and 319112, Parry claims the Tribunal erred in failing to accurately assess the TCV of Parcel 057. Because the Tribunal's determinations are supported by competent, material and substantial evidence, we must affirm. *Briggs Tax Service, LLC v Detroit Pub Schs*, 485 Mich 69, 75; 780 NW2d 753 (2010).

A. STANDARD OF REVIEW

Our review of decisions of the Tax Tribunal is limited. "In the absence of fraud, error of law or the adoption of wrong principles, no appeal may be taken to any court from any final agency provided for the administration of property tax laws from any decision relating to valuation or allocation." Const 1963, art 6, § 28; *Briggs Tax Service*, 485 Mich at 75. Findings of fact made by the tribunal are "conclusive if they are supported by competent, material, and substantial evidence on the whole record." *Briggs Tax Service*, 485 Mich at 75. If the facts are not disputed and fraud is not alleged, our review is limited to whether the Tax Tribunal made an error of law or adopted a wrong principle. *Id*. However, "[f]ailure to base a decision on competent, material, and substantial evidence constitutes an error of law requiring reversal." *Meijer, Inc v City of Midland*, 240 Mich App 1, 5; 610 NW2d 242 (2000). "Substantial evidence must be more than a scintilla of evidence, although it may be substantially less than a preponderance of the evidence." *Drew v Cass Co*, 299 Mich App 495, 499; 830 NW2d 832 (2013) (quotation marks and citation omitted). There is substantial evidence to support the

[15] We note separately that the Township's voluntary dismissal of its complaint did not preclude it from seeking sanctions. MCR 2.625(B)(2) expressly permits an award of sanctions in an action involving several issues or counts stating different causes of action.

[16] In light of this holding, review of the circuit court's calculation of costs is moot.

tribunal's factual findings "if a reasonable person would accept the evidence as sufficient to support the conclusion." *Pontiac Country Club v Waterford Twp*, 299 Mich App 427, 434; 830 NW2d 785 (2013).

B. PROPERTY VALUATION GENERALLY

The determination of the taxable value of real property in Michigan begins by determining the TCV of the property. *Detroit Lions, Inc v City of Dearborn*, 302 Mich App 676, 696; 840 NW2d 168 (2013). Generally, "property must be assessed at 50 percent of its true cash value." *Id.*, citing Const 1963, art 9, § 3; MCL 211.27a(1). TCV is defined as "the usual selling price at the place where the property to which the term is applied is at the time of assessment, being the price that could be obtained for the property at private sale, and not at auction sale except as otherwise provided in this section, or at forced sale." MCL 211.27(1). TCV is "synonymous with fair market value and refers to the probable price that a willing buyer and a willing seller would arrive at through arm's length negotiation[.]" *Detroit Lions, Inc*, 302 Mich App at 696 (quotation marks and citations omitted).

The petitioner bears the burden of proving the TCV of the property. *President Inn Properties, LLC v City of Grand Rapids*, 291 Mich App 625, 631; 806 NW2d 342 (2011). This Court has previously explained this burden, stating:

> The burden of proof encompasses two concepts: (1) the burden of persuasion, which does not shift during the course of the hearing; and (2) the burden of going forward with the evidence, which may shift to the opposing party. Nevertheless, because Tax Tribunal proceedings are de novo in nature, the Tax Tribunal has a duty to make an independent determination of true cash value. Thus, even when a petitioner fails to prove by the greater weight of the evidence that the challenged assessment is wrong, the Tax Tribunal may not automatically accept the valuation on the tax rolls. Regardless of the method employed, the Tax Tribunal has the overall duty to determine the most accurate valuation under the individual circumstances of the case. [*Id.* (internal citations and quotation marks omitted).]

However, "[t]he appellant bears the burden of proof in an appeal from an assessment, decision, or order of the Tax Tribunal." *Drew*, 299 Mich App at 499 (quotation marks and citation omitted).

Our courts have long recognized that there are three common approaches for determining the TCV of property: "capitalization-of-income approach, the sales-comparison or market approach, and the cost-less-depreciation approach. *President Inn Properties, LLC*, 291 Mich App at 639. However, because "the legislature did not direct that specific methods be used[,]" it is up to the courts to approve or disapprove of valuation methods used. *Great Lakes Div of Nat'l Steel Corp v Ecorse*, 227 Mich App 379, 390; 576 NW2d 667 (1998). It may be useful to use variations of the common approaches or "entirely new methods" if those methods are "found to be accurate and reasonably related to fair market value" so long as the valuation determined by the Tax Tribunal is "the usual price for which the property would sell." *Id.* "In other words, a valuation method is wrong only if it does not lead to the most accurate determination of the

taxable property's [TCV] or fair market value" based upon the circumstances of the particular case. *President Inn Properties*, 291 Mich App at 639.

C. 2011 TAX ASSESSMENT APPEAL – DOCKET NO. 307992[17]

As a threshold matter, Parry claims for the first time on appeal that the Township's August 18, 2011 Valuation Disclosure was fraudulent. In making this argument, Parry cites former law, which permitted a taxpayer to seek relief from a tax assessment based on fraud.[18] Examples of fraud in this context include intentional over-assessments and reliance on a valuation method that fails to determine a TCV. *Helin v Grosse Pointe Twp*, 329 Mich 396, 407; 45 NW2d 338 (1951).

Parry's argument is a nonstarter. Indeed, it ignores that the Tax Tribunal Act, MCL 205.701 *et seq*., requires the Tax Tribunal to make an independent assessment of the TCV of property, MCL 205.735(2). Further, the Tax Tribunal need not accept the parties' valuation theories, but may accept one and reject the other, reject both, or it may use a combination of theories to arrive at its determination of TCV so long as the valuation represents the usual price for which the property would sell. *Great Lakes Div of Nat'l Steel Corp*, 227 Mich App at 409; MCL 211.27.

Parry additionally ignores that the Tax Tribunal Act specifically sets forth the Tribunal's exclusive and original jurisdiction as pertaining to proceedings relating to assessment, valuation, rates, special assessments, allocation, or equalization as well as to proceedings for a refund or redetermination of a tax under this State's property tax laws. MCL 205.731. While the Tribunal is empowered to grant "other relief" in a matter over which it has jurisdiction, MCL 205.732(c), its power to hear certain types of cases is circumscribed by statute. *Federal-Mogul Corp v Dep't of Treasury*, 161 Mich App 346, 359; 411 NW2d 169 (1987).

Here, Parry's claim of fraud is simply a re-styled challenge to the valuation of his property. Indeed, he variously claims the assessment was incorrect because the property previously sold twice for $1.00 and because the other properties evaluated in the Valuation Disclosure allegedly were not comparable to his own. But determining the propriety of the assessment was precisely the purpose of Parry's petition to the Tribunal in the first place. That Parry characterized the assessment as "spiteful" does not change the essence of his claim. Fraud is therefore not at issue.

[17] Contrary to the Township's claim in Docket No. 313717, Parry fully briefed this appeal and did not abandon it.

[18] See *22 Charlotte, Inc v Detroit*, 294 Mich 275, 281; 293 NW 647 (1940), *S S Kresge Co v Detroit*, 276 Mich 565, 571; 268 NW 740 (1936), *City of Birmingham v Oakland Co Supervisors*, 276 Mich 1; 268 NW 409 (1935), and *Sloman-Polk Co v Detroit*, 261 Mich 689; 247 NW 95 (1933).

Turning to the merits, we first address Parry's contention that the Tribunal's decision regarding his 2012 tax assessment (which Parry appeals in Docket No. 313717) undermines its prior decision at issue here.[19] Underpinning this contention is that while, here, the Tribunal utilized the Township's sales comparison approach in finding the property's TCV, the Tribunal rejected that same approach in determining the 2012 TCV. The problem for Parry is that the factual bases of the Tribunal's decisions in both cases were different.

In its review of the 2012 assessment, the Tribunal rejected the referee's reliance on the Township's sales comparison approach because the adjustments made to Parry's assessment were not also applied to the comparable properties "to account for the differences in land." Accordingly, the Tribunal relied upon the property record card to establish the property's TCV. In contrast, here, the referee (whose proposed opinion and judgment the Tribunal adopted) expressly found that while Parry previously owned land adjoining the property, he "knowingly and willingly purchased this property in December 2009, when he no longer owned any of the adjoining parcels." This finding was supported by the warranty deed Parry submitted to the Tribunal. From this factual finding the referee concluded the Township's comparison of vacant land sales were adequate to support a TCV of $29,900.

The different bases for these decisions are key, for while the Tribunal's review of the 2012 assessment found the property "landlocked," that review contains *no* finding that Parry "knowingly and willingly" participated in any action that related to the property's condition as the Tribunal's review of the 2011 assessment did. Accordingly, the opinion and judgment at issue here was supported by competent, material, and substantial evidence that was different than the evidence underlying the Tribunal's rejection of the 2012 sales comparison approach. There was no logical inconsistency.

Along similar lines, Parry cannot establish that the Tribunal failed to make an independent determination of value. On this score, Parry argues that the Tribunal relied on the Township's "false" representation that Parry owned an adjacent parcel and that Parry owned 6.01 acres of land in 2010. Parry is wrong on both counts. As for the former, the referee specifically found that Parry did not own an adjoining parcel when he purchased the property in 2009. Again this is confirmed by the warranty deed. And as for the latter, Parry ignores that his quitclaim deed indicated that he acquired Thomson's entire interest in Parcel 054 (consisting of 6.01 acres) without qualification. Notwithstanding this, the referee acknowledged that as of the "split" of Parcel 054, Parry owned only approximately five acres.

Equally unsustainable is Parry's assertion that the Tribunal failed to consider issues involved in the Oakland Circuit Court litigation or to consider the "landlocked" condition of the property relative to the comparable properties set forth in the Township's analysis. Indeed, the referee specifically identified the circuit court complaint as among the documents under consideration, and found that Parry "knowingly and willingly" purchased the property in its

[19] Parry raised this argument in his motion to expand the record on appeal, which was granted on January 22, 2013. *Parry v Groveland Twp*, unpublished order of the Court of Appeals, entered January 22, 2013 (Docket No. 307992).

current condition. The fact that every piece of evidence offered by Parry did not ultimately weigh in his favor does not automatically impugn the independence of the Tribunal's ultimate determination.[20] *President Inn Properties, LLC*, 291 Mich App at 633 ("the weight given to the evidence is within the discretion of the Tax Tribunal.").

Finally, Parry urges reversal because the assessment exceeds the property's TCV by 50 percent. Parry hinges this entire argument on the two prior sales of the property for $1.00, and concludes that any finding that the value increased by 29,000 times in two years establishes, *ipso facto*, that the Tribunal erred. This argument is doubly flawed.

First, it presupposes that prior sales history is conclusive of TCV. It is not. See MCL 211.27(6) ("the purchase price paid in a transfer of property is not the presumptive true cash value of the property transferred"); *Great Lakes Div of Nat'l Steel Corp*, 227 Mich App at 405 ("the sales price of a piece of property is not conclusive evidence of true cash value, even when the sale is for the property that is the subject of the assessment"). Second, Parry's claim assumes that the Tribunal was bound to accept his valuation of the property at $1.00 (the only valuation evidence Parry offered), over the Township's conflicting assessment. The fact that the Tribunal implicitly rejected Parry's valuation is not error, however, where its determination of TCV was otherwise supported by the competent, material and substantial evidence noted previously. The Tribunal did not err.

D. 2012 TAX ASSESSMENT APPEAL – DOCKET NO. 313717

Before reaching the merits of the Tax Tribunal's decision in Docket No. 313717, Parry initially alleges that the Tribunal's utilization of the cost-less-depreciation approach ("cost approach") denied him due process of law since that specific approach was not specifically raised by the parties. However, the Tax Tribunal is required to make its own, independent determination of TCV, and in doing so, is not limited as to which theory it applies. *Great Lakes Div of Nat'l Steel Corp*, 227 Mich App at 390. Parry was free to present to the Tribunal the theories he deemed most applicable. That the Tribunal ultimately adopted a theory different than the one presented by the Township (regardless of the how the Tribunal styled the theory), then, did not deny Parry any due process right, but instead was consistent with the Tribunal's duty to utilize "an approach that provides the most accurate valuation under the circumstances." *Jones & Laughlin Steel Corp v City of Warren*, 193 Mich App 348, 353; 483 NW2d 416 (1992). Parry's due process claim is no more than a disguised attempt to take a second bite at the apple. This we will not allow.

Turning to the Tax Tribunal's decision, Parry asserts that the Tribunal erred in applying the cost approach to determine the property's TCV. "Under the cost approach, true cash value is derived by adding the estimated land value to an estimate of the current cost of reproducing or replacing improvements and then deducting the loss in value from depreciation in structures, i.e.,

[20] To the extent Parry suggests that the Tribunal improperly made findings regarding the 2010 TCV of the property, he ignores that the quitclaim deed indicated his rights to the entirety of Parcel 054.

physical deterioration and functional or economic obsolescence." *Wayne Co v State Tax Comm*, 261 Mich App 174, 208; 682 NW2d 100 (2004).

Here, after finding that the referee improperly reduced the assessment, the Tribunal rejected the Township's application of the sales comparison approach. The Tribunal held that even though the Township incorporated two adjustments to the rate applied to separate acreages of Parcel 057, the Township's analysis failed to reflect any similar adjustment to the comparable properties utilized in the sales comparison approach analysis. Based on this conclusion, the Tribunal applied what it termed the "cost approach" by utilizing "the only remaining evidence of value," i.e., the property record card, to establish a land value of $29,440.

Parry claims that this conclusion was not an application of the cost approach as the Tribunal explained, but rather an adoption of the Township's computer generated tax assessment. Initially, Parry is correct that the Tribunal did not analyze improvements or depreciation in the manner typically employed in a cost approach analysis. *Wayne Co*, 261 Mich App at 208. However, the fact that the Tribunal clumsily entitled its valuation method is not fatal. Indeed, the Tribunal's obligation was to find "the most accurate determination of the TCV's fair market value," *President Inn Properties*, 291 Mich App at 639, which may be premised upon variations of the common approaches, *Great Lakes Division of Nat'l Steel Corp*, 227 Mich App at 390. Based on the available evidence, this is what the Tribunal did.

On this point, it bears emphasis that the *only* evidence Parry presented providing any specific valuation of the property were the quitclaim deeds reflecting the parcel's prior sales to Thomson and to Parry.[21] Again, both deeds reflect a purchase price of $1.00. Parry argued that this was an accurate valuation because both buyers were "reasonable" and "intelligent," and because the parties in both sales were sophisticated and agreed that the property's value was only $1.00.

The record reflects that the referee considered Parry's valuation theory based on the sales price reflected in the quitclaim deeds. However, the referee did not find those prices reliable indicators of TCV because Parry had failed to demonstrate that the sales were between unrelated parties or that the sales were subject to normal market pressures. The referee further noted there was insufficient evidence as to "competing offers or typical motivations, and that Parry had refused to testify to his motivations for buying the property for only $1.00."

As stated previously, the price determined through an arm's length negotiation lies at the heart of a property's TCV. *Detroit Lions, Inc*, 302 Mich App at 696. In light of the circumstances of this case, the finding that the prior sales were unreliable, and consequently not true indicators of TCV – which was incorporated into the final opinion and judgment – was wholly proper. See *Samonek v Norvell Twp*, 208 Mich App 80, 85-86; 527 NW2d 24 (1994) (finding that while the selling price of a particular piece of property is evidence of value, it is not

[21] As the referee correctly observed, "Parry failed to provide a single sale comparable to support [his] contention of value."

conclusive and must be weighed in light of the circumstances surrounding the sale such as the use of a quitclaim deed).

Absent other reliable evidence, then, the Tribunal utilized "the only remaining evidence of value." This consisted of the property record card, which the Tribunal determined to accurately reflect the proper acreage and to properly apply adjusted rates in establishing a TCV of $29,440. Accordingly, this TCV was determined independent of the Township's own valuation analysis, yet still within the range of evidence presented by the parties – regardless of the title applied.[22] *Community Assoc v Meridian Charter Twp*, 110 Mich App 807, 814; 314 NW2d 490 (1981) ("It is the duty of the Tax Tribunal to adopt the method of valuation which is most appropriate to the individual case as the particular facts may indicate."). We find no error.

Parry takes issue with the referee's finding, arguing that it effectively excluded his evidence of the property's prior sales history. This argument conflates credibility with admissibility, however. Indeed, like most tax appeals, this one involved conflicting theories of valuation. The fact that the Tribunal chose to credit a portion of the Township's theory over Parry's does not mean the Tribunal failed to consider prior sales history. Rather, it simply means the Tribunal adhered to its duty to determine the most accurate determination of TCV based upon the evidence and the circumstances. *President Inn Properties*, 291 Mich App at 639. Parry concedes those circumstances included that the prior sales were not subject to normal market pressures or "typical motivations." The determination that the prior sales history was unreliable therefore was well supported. *Samonek*, 208 Mich App at 85-86. By the same token, because the sales history is unreliable, Parry's argument that the property was assessed in excess of 50 percent of its TCV likewise collapses.

Parry's final assertion—that the Tribunal failed to account for the "as is/where is" conditions of the property in reaching its determination—fares no better. Indeed – assuming this nebulous phrase refers to Parry's claim that the property is "landlocked" – that allegation is the very foundation of Parry's contention that the parcel is only worth $1.00 in the first place. That sales price was properly found unreliable, and the Tribunal did not err in determining the TCV based on the evidence before it. Error is nonexistent.[23]

E. 2013 TAX ASSESSMENT APPEAL – DOCKET NO. 319112

This brings us to Parry's appeal of the 2013 tax assessment. Although Parry largely recasts and expands upon his prior meritless challenges, the factual basis of the Tribunal's decision differs in several respects from the 2011 and 2012 determinations. As in the prior appeals, reversal is not appropriate.

[22] In view of this, Parry's questioning the Tribunal's methodology and the independence of its determination is of no moment.

[23] To the extent Parry alleges fraud, that argument fails for the same reasons stated in Docket No. 307992.

For starters, Parry impugns the Tribunal's review of his evidence, arguing that no "willing buyer" would purchase the property "at any price." Parry roots this contention in the following allegations: (1) the property is "landlocked" and not accessible; (2) the ongoing litigation involving the property would dissuade a sale; (3) the possibility of obtaining an easement from a neighbor is remote; and (4) the cost of constructing a driveway or other route to access the property if an easement were obtained would range between $25,000 and $100,000 depending on its location. None of this so-called evidence undermines the Tribunal's decision.

First, while the Tribunal acknowledged that the property lacked public road frontage that likely impacted its value, the Tribunal properly found that Parry had presented *no* evidence as to what effect that lack of road frontage would have on the market. This was his burden. Moreover, it was based on Parry's own admission – and not the testimony of the Township's appraiser – that the Tribunal concluded Parry had access to the property since he had been on it within the year preceding the Tribunal's decision.[24] This directly undermines Parry's accessibility claim. That Parry's son owned land adjacent to the property, while not dispositive, buttresses the Tribunal's finding. The Tribunal's determination on this score was therefore well supported.[25]

Second, the record clearly reflects that the Tribunal considered the effect of the ongoing litigation. Indeed, the Tribunal "reviewed all testimony and documentary evidence on record." This included the documents from the circuit court case presented by Parry. Parry cannot substantiate this bare bones allegation.

Plaguing Parry's third and fourth contentions regarding the possibility of obtaining an easement from a neighbor and the cost of constructing access to the property is the lack of *any* support in the record. As before, Parry offers nothing but his own *ipse dixit* and a hypothetical dialogue with a fictitious buyer to substantiate these allegations. Such speculation affords him no refuge, however. *Meijer*, 240 Mich App at 5. He has again failed to shoulder his burden.

In contrast to Parry's claims, the Tribunal's decision was well supported. Specifically, the Tribunal reviewed the Township's Valuation Disclosure and carefully analyzed the comparable properties contained in that disclosure, including the acreage, sales prices and valuation dates. As the Tribunal held, the Township's sales study was the only market based evidence of valuation on the record and this was in large measure the foundation of its decision.

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[24] In light of his testimony below, Parry cannot credibly claim that the affidavit of the Township's appraiser is "perjuriuos." Regardless, although the affidavit purportedly reflects the appraiser's testimony in the Tribunal, since it is presented for the first time on appeal, it is not properly before us. *Reeves v Kmart Corp*, 229 Mich App 466, 481 n 7; 582 NW2d 841 (1998).

[25] Based on evidence that Parry could access the property, it was unnecessary for the Tribunal to reach the issue of whether an implied easement by necessity would arise. The Township properly characterized this portion of the opinion as dicta.

Parry countered below, as he does here, that the Township employed a faulty methodology which failed to adjust the comparable properties' valuation to account for the condition of his property (i.e., that the property lacked road frontage, was not "buildable," was involved in litigation and did not conform to zoning ordinances). But, in evaluating these contentions, the Tribunal correctly observed that while the comparable sales did not contain any adjustments, Parry had offered no market based evidence valuing the property, no evidence setting forth what the alleged adjustments should be, and no evidence that the comparable sales were not similar. The Tribunal even addressed Parry's reliance on secondary sources, noting that one was outdated and the other was irrelevant since it pertained to federally, and not privately owned land.[26]

Against these findings, the Tribunal considered Parry's *only* evidence of valuation in the form of the two quitclaim deeds setting forth the two prior sales of the property for $1.00. The Tribunal observed that Parry presented *no* evidence establishing that the prior sales were made at arm's length, including such potentially probative facts as the length of time the property spent on the market, the existence of other offers for the property, or even a listing price. Parry attempts to rebut this conclusion, asserting the identical, baseless attacks set forth in Docket Nos. 307992 and 313717. As before, those attacks (as well as his claims of fraud) remain equally meritless here. By the same token, Parry's reliance on the quitclaim deeds cannot support his claim that the property was assessed in excess of 50 percent of its TCV. *Samonek*, 208 Mich App at 85-86; *President Inn Properties, LLC*, 291 Mich App at 633.

Before concluding, we note that the Township has requested sanctions under MCR 7.216(C) (authorizing sanctions for vexatious proceedings on appeal). Notably, the Township's request is contained in its brief. However, a request for sanctions under MCR 7.216(C), must be made in a motion filed in accordance with MCR 7.211(C)(8); a brief on appeal is insufficient. *Prentis Family Foundation v Barbara Ann Karmanos Cancer Inst*, 266 Mich App 39, 60; 698 NW2d 900 (2005). Accordingly, we deny the Township's request for sanctions for failure to file in the proper form.

V. CONCLUSION

In Docket No. 313335, we affirm the circuit court's order dismissing Parry's claims and counter-claims, but reverse the court's order awarding sanctions. In Docket Nos. 307992, 313717 and 319112 , we affirm the Tax Tribunal's opinions and judgments in their entirety. No

[26] See Interagency Land Acquisition Conference: *The Uniform Appraisal Standards for Federal Land Acquisitions* (Chicago: Appraisal Institute, 2000) and *The Appraisal of Real Estate* 12th ed (Appraisal Institute, 2001). To the extent Parry relied on these sources in Docket No. 313717, they do not undermine the Tribunal's finding that the prior sales were not the result of arm's length negotiations where the weighing of evidence was exclusively within the province of the Tribunal.

costs of appeal may be taxed, neither party having prevailed in full. MCR 7.219(A).

/s/ Kathleen Jansen
/s/ Christopher M. Murray
/s/ Mark T. Boonstra